

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Nancy Korbett

Case Number: 04-04722

Names of the Respondents  
Scott Eugene Shoup  
Financial Investment Analysts, Inc.

Hearing Site: Pittsburgh, Pennsylvania

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Nature of the Dispute: Customer vs. Terminated Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant, hereinafter referred to as "Claimant", was represented by James F. Rosenberg, Esq., Marcus & Shapira, LLP, Pittsburgh, Pennsylvania.

Respondent, Scott Eugene Shoup ("Shoup"), hereinafter referred to as "Respondent Shoup", was represented by Richard Babnick, Jr., Esq., Sichenzia Ross Friedman Ference LLP, New York, New York.

Respondent, Financial Investment Analysts, Inc. ("FIA"), hereinafter referred to as "Respondent FIA" did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim filed on June 30, 2004.

Claimant signed the Uniform Submission Agreement on June 24, 2004.

Respondent FIA did not file an Answer.

Respondent FIA did not file an executed Uniform Submission Agreement with NASD Dispute Resolution.

Respondent Shoup filed a Statement of Answer and Motion to Dismiss on September 24, 2004.

Respondent Shoup signed the Uniform Submission Agreement on August 24, 2004.

Claimant filed a Response to Respondent Shoup's Motion to Dismiss on October 13, 2004.

**CASE SUMMARY**

Claimant, in her Statement of Claim asserted the following causes of action, among others: breach of contract, negligence, breach of fiduciary duty, misrepresentations, non-disclosures, unauthorized trading, omission of facts, suitability, and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law. The causes of action relate to the purchase and sale of annuities and mutual funds, including a Venture Annuity with Manufacturers Life Insurance Company of North America, Putnam Allstate Advisory Annuity, Putnam Money Market Fund C1-A, Putnam Income Fund C1-B, Putnam Income Fund C1-A, Putnam Int'l

Voyager Fund C1-A, Putnam Cap. Opportunities C1-B, and Putnam Small Cap. Value Fund C1-B.

Unless specifically admitted in his Answer, Respondent Shoup denied the allegations made in the Statement of Claim and asserted the following defenses, among others: assumption of risk; Claimant failed to timely object to any transactions in her account; authorization; ratification; Claimant's claims are barred by the doctrines of waiver, release, and estoppel; Claimant's claims are barred by the applicable statutes of limitations; there is no private right of action based on NASD rules; failure to state a claim upon which relief may be granted; Respondent did not act with the requisite scienter; and failure to mitigate damages.

### **RELIEF REQUESTED**

Claimant in her Statement of Claim requested:

Compensatory Damages	\$ 550,000
Punitive Damages	\$ 1,500,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Shoup in his Statement of Answer requested an award denying each and every claim asserted in the Statement of Claim and dismissing the Statement of Claim, and any such other and further relief as the Arbitration Panel (the "Panel") deems just, equitable and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondent FIA has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent FIA did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Claimant had pursued a default judgment against Respondent FIA, and this matter was previously bifurcated for that purpose. Specifically, Arbitration Case #05-00424 was created to adjudicate the default judgment issues against Respondent FIA. However, at the hearing on the merits in this matter, the Panel determined to resolve all issues against Respondents FIA and Shoup in this Award.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Shoup is liable to and shall pay to Claimant compensatory damages in the amount of \$ 28,750.00;
2. Respondent FIA is liable to and shall pay to Claimant compensatory damages in the amount of \$ 28,750.00;
3. All claims for punitive damages are denied in their entirety;
4. All claims for attorneys' fees are denied in their entirety; and
5. Any and all relief not specifically addressed herein is denied in its entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$ 500.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00 = \$ 450.00  
Pre-hearing conference: April 22, 2005 1 session

Three (2) Pre-hearing sessions with Panel @ \$ 1,200.00 = \$ 2,400.00  
Pre-hearing conferences: December 14, 2004 1 session  
February 18, 2005 fee waived  
April 29, 2005 1 session

Six (6) Hearing sessions @ \$ 1,200.00 = \$ 7,200.00  
Hearing Dates: September 19, 2005 2 sessions  
September 20, 2005 2 sessions  
September 26, 2005 2 sessions

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Total Forum Fees = \$ 10,050.00

1. The Panel has assessed \$ 5,025.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 5,025.00 of the forum fees to Respondent Shoup.

**SEE SUMMARY**

Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,525.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 3,725.00

Respondent, Shoup, is assessed and shall pay:


Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,025.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 5,025.00


All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Donald J. Gilbert	-	Public Arbitrator, Presiding Chairperson
Daniel J. Kortum, Esq.	-	Public Arbitrator, Panelist
David J. Capriotti	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

  
Donald J. Gilbert  
Public Arbitrator, Presiding Chairperson

  
Signature Date

  
Daniel J. Kortum, Esq.  
Public Arbitrator, Panelist

  
Signature Date

  
David J. Capriotti  
Non-Public Arbitrator, Panelist

  
Signature Date

October 4, 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Donald J. Gilbert  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

  
Daniel J. Kornum, Esq.  
Public Arbitrator, Panelist

9-29-05  
Signature Date

\_\_\_\_\_  
David J. Capriotti  
Non-Public Arbitrator, Panelist

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Daniel J. Kortum, Esq.  
Public Arbitrator, Panelist

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Signature Date

  
\_\_\_\_\_  
David J. Capriotti  
Non-Public Arbitrator, Panelist

10/3/05  
Signature Date

October 4, 2005  
Date of Service (For NASD Dispute Resolution office use only)